



Milwaukee Police Department
Police Administration Building
749 West State Street
Milwaukee, Wisconsin 53233
<http://www.milwaukee.gov/police>

Alfonso Morales
Chief of Police

(414) 933-4444

October 9, 2018

MuckRock News
Attn: Annita LUCCHESI
DEPT MR 59030, 411A Highland Ave
Somerville, MA 02144-2516

Dear Annita LUCCHESI:

This letter is in response to your public records request pursuant to the provisions of the Wisconsin Public Records Law (Wis. Stat. § 19.31-39). In your letter dated August 5, 2018, you requested the following information:

1. See Attached Request

The public policy in this state is to give the public the greatest amount of access to public records as possible. Wis. Stat. § 19.32. The general presumption is that public records are open to the public unless there is a clear statutory or common law exception. If there is no clear statutory or common law exception the custodian must "decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure." *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 28 (citations omitted.) Notwithstanding the presumption of openness, the public's right to access to public records is not absolute. *Journal/Sentinel v. Agerup*, 145 Wis. 2d 818, 822 (Ct. App. 1988).

Upon careful consideration and application of the required Wis. Stat. § 19.35(1)(a) balancing test, it is my determination that public policies favoring nondisclosure outweigh any public interest in disclosure. The records that you have requested pertain to an investigation that is currently on-going. In *Linzmeier v. Forcey*, 2002 WI 84, ¶ 30, 254 Wis. 2d 306, the Wisconsin Supreme Court opined that when an investigation is on-going the "general presumption of openness will likely be overcome." Law enforcement records pertaining to ongoing investigations can be particularly sensitive. In this instance, release of the requested records related to the on-going investigation, prior to its completion, could compromise or prejudice additional investigation, could impact the ability of law enforcement to gain cooperation from potential witnesses, and could infringe on the reputation and privacy of victims and witnesses. The records also contain raw investigation data gathered from witnesses of varying degrees of reliability that has not yet been properly verified. See *Id.* at ¶¶ 30-39; see also *Journal/Sentinel, Inc. v. Agerup*, 145 Wis. 2d 818 (Ct. App. 1988).

Public policies in favor of keeping strategies for crime detection and prevention were also considered. See Wis. Stat. § 19.85(1)(d). The exceptions to the requirement of a government body to meet in open session under Wis. Stat. § 19.85 are indicative of public policy and may be used as grounds for denying a public records request after application of the balancing test. Wis. Stat. § 19.35(1)(a). Wis. Stat. § 19.85(1)(d) has been interpreted by courts as being representative as a public policy favoring nondisclosure of records related to ongoing criminal investigations. See e.g. *Agerup*, 145 Wis.2d at 825.

Also considered was whether disclosure of the records that relate to the ongoing investigation would reveal prosecutorial techniques or strategies. "Public records containing prosecution strategies and police tactics are not specifically excepted from disclosure by Wisconsin statutes, but records custodians can properly consider such content when determining whether the presumption of openness ... is overcome by another public policy." *Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶ 18, 372 Wis.2d 460.

Additionally, although the Freedom of Information Act (FOIA) 5 USC § 552 does not apply to Wisconsin, Wisconsin Courts have held that FOIA exceptions may be considered when applying the balancing test. See *Linzmeier*, 2002 WI 84; *Kraemer Bros. v. Dane County*, 229 Wis. 2d 86, 103 (Ct. App. 1999), *review denied*, 231 Wis. 2d 375 (1999). The relevant FOIA exception includes section 7(E) (records which disclose techniques, procedures or guidelines for law enforcement investigations) 5 USC §§ 552(b)(7)(E).

Accordingly, pursuant to the reasons set forth above, your request for records that pertain to the ongoing investigation that you have referenced is being denied. If you wish, you may resubmit your request once the investigation has concluded. If you choose to do so, your request will be re-evaluated at that time.

Also, after reviewing your request, I have determined that your request is insufficient under the public records law. A request under the public records law is sufficient if it reasonably describes the requested record or information being requested. A request is insufficient if it is without a reasonable limitation as to the subject matter or the length of time represented by the record. Wis. Stat. § 19.35(1)(h).

Wisconsin courts have agreed that a record custodian properly denied a public records request under § 19.35(1)(h) where a request did not include a sufficient subject matter or length of time for the requested records. The court of appeals stated that the purpose of the "time and subject matter limitation is to prevent a situation where a request unreasonably burdens a records custodian, requiring the custodian to spend excessive amounts of time and resources deciphering and responding to a request." *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 17. The court of appeals agreed that the record custodian appropriately denied the request because compliance would have required locating copies of e-mails from many employees without regard to the content or relationship to matters involving the requester. As such, the request was deemed sufficiently overly broad and burdensome to warrant rejection under § 19.35(1)(h). *Id.* ¶ 24.

Specifically, this request does not reasonably describe a record.

At this time, I am denying your request because it is overly broad and vague, and the time frame is overly burdensome. However, if you would like to narrow your request to include a reasonable timetable / subject matter, I will reconsider my denial.

This determination is subject to review by *mandamus* action under Wis. Stat. § 19.37(1), or upon an application to the Wisconsin Attorney General or the Milwaukee County Corporation Counsel.

Sincerely,

ALFONSO MORALES
CHIEF OF POLICE



KERRY NAMIN
POLICE SERGEANT

AM: JHP: jhp
H14200 Response Letter

Wisconsin Open Records Act Request: MMIW Cases

59030-01379852@requests.muckrock.com

Sun 8/5/2018 7:57 PM

To: Records, Open <mpdopenrecords@milwaukee.gov>;

Milwaukee Police Department
ORA Office
P.O. Box 531
Milwaukee, WI 53210

August 5, 2018

H14200

To Whom It May Concern:

AUG 6 AM 11:54

Pursuant to the Wisconsin Open Records Act, I hereby request the following records:

Data on all cases of: unsolved missing persons, homicides, suspicious deaths, and deaths in custody involving an Alaska Native/American Indian woman or girl victim within your jurisdiction(s). For the purposes of this request, "Alaska Native/American Indian" is defined as any individual who was identified as a member of an Alaska Native or American Indian community or as having Alaska Native/American Indian heritage. "Woman or girl" includes all victims identified as females, as well as transgender women. If there are any Jane Does that have been identified as potentially Alaska Native or American Indian, please include them as well. We are requesting cases dating from 1900 to the present.

This request is for basic information on cases as classified above. Such information may include but is not limited to victim name, location and date of disappearance/death, age of victim, status of case (solved or unsolved).

Please note an initial request for these records was filed approximately 9 months ago, which still has not been filled.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days.

Sincerely,

Annita Lucchesi

Filed via MuckRock.com

E-mail (Preferred): 59030-01379852@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/milwaukee-police-department-653/mmiw-cases-59030/?uuid-login=9a3be03d-177c-4597-a252-1177927e9526&email=mpdopenrecords%40milwaukee.gov#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 59030
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

RE: Wisconsin Open Records Act Request: MMIW Cases

59030-01379852@requests.muckrock.com

Wed 9/5/2018 4:02 AM

To: Records, Open <mpdopenrecords@milwaukee.gov>;

Milwaukee Police Department
ORA Office
P.O. Box 531
Milwaukee, WI 53210

W14200

September 5, 2018

This is a follow up to a previous request:

To Whom It May Concern:

I wanted to follow up on the following Wisconsin Open Re
2018. Please let me know when I can expect to receive a re

dated on Aug. 5,

Thanks for your help, and let me know if further clarification.

Filed via MuckRock.com

E-mail (Preferred): 59030-01379852@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/milwaukee-police-department-653/mmiw-cases-59030/?uuid-login=e5ae1de7-9c87-42cd-b5bc-1db3f718c74f&email=mpdopenrecords%40milwaukee.gov#agency-reply

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SEP 5 AM 9:08

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On Aug. 21, 2018:

Hello,

Your request has been received, dated 08/05/18 and it will be reviewed in the order received.

Thank you

On Aug. 5, 2018:

To Whom It May Concern:

Pursuant to the Wisconsin Open Records Act, I hereby request the following records:

Data on all cases of: unsolved missing persons, homicides, suspicious deaths, and deaths in custody involving an Alaska Native/American Indian woman or girl victim within your jurisdiction(s). For the purposes of this request, "Alaska Native/American Indian" is defined as any individual who was identified as a member of an Alaska Native or American Indian community or as having Alaska Native/American Indian heritage. "Woman or girl" includes all victims identified as females, as well as transgender women. If there are any Jane Does that have been identified as potentially Alaska Native or American Indian, please include them as well. We are requesting cases dating from 1900 to the present.

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